

**Shamrock Coal Co., Inc. and United Mine Workers of America, District 25, Petitioner. Case 4-RC-15223**

26 August 1983

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND ZIMMERMAN**

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties, and approved by the Regional Director for Region 4 on 10 January 1983, an election by secret ballot was conducted on 20 January 1983 among the employees in the stipulated unit. Upon conclusion of the balloting, the parties were furnished with a tally of ballots which shows that, of approximately 20 eligible voters, 19 cast ballots, of which 7 were for, and 11 against, the Petitioner; there was 1 challenged ballot. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.<sup>1</sup>

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 4 conducted an investigation of the issues raised by the objections and, on 22 March 1983, issued and duly served on the parties his Report and Recommendations on Objections to Election and Notice of Hearing. In his report, the Regional Director recommended that the Petitioner's Objection 3, in part, raised substantial and material issues of fact which could best be resolved on the basis of record testimony taken at a hearing. The Regional Director further recommended that the Board overrule the Petitioner's Objections 1, 2, 4, 5, and 6 and a portion of Objection 3. Thereafter, the Petitioner filed timely exceptions, with a supporting brief, to the Regional Director's report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Employer's facility in Blythe Township (Middleport), Pennsylvania; excluding all office clericals, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Petitioner's exceptions and supporting brief, and the entire record in this case, and hereby adopts the Regional Director's findings and recommendations as modified herein.<sup>2</sup>

The Petitioner maintains in its Objection 3 that "certain employees had information from fellow employees that their jobs were in jeopardy because of their union activities." This information allegedly emanated from "confidential officials" of the Employer. The Regional Director found that, in support of this objection, the Petitioner had submitted evidence that the Employer had threatened employees both before and after the filing of the petition. He specifically noted that the Petitioner submitted evidence that, a few days before the election, Employer representative Joseph Mullin had threatened to discharge employees and had intimidated an employee.

The Regional Director concluded that the allegations of threats and intimidation within a few days of the election merited a hearing. However, since prepetition conduct does not constitute grounds for setting aside an election, the Regional Director recommended that the Board overrule that portion of Objection 3 relating to such conduct. We disagree with this latter recommendation.

The Regional Director correctly cites *Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1961), for the proposition that prepetition conduct may not be used as the basis upon which to set aside an election. However, we have frequently held that this rule does not preclude consideration of such conduct "insofar as it lends meaning and dimension to related postpetition conduct, or assists in evaluating it."<sup>3</sup> In the instant case, the Employer's prepetition

<sup>1</sup> On 24 February 1983 the Petitioner attempted to supplement its objections by alleging that during the election employees and management personnel drank alcoholic beverages in a room in the trailer in which the election was held. The Regional Director refused to entertain this allegation on the grounds that it was untimely filed pursuant to Sec. 102.69 of the Board's Rules and Regulations and that the Petitioner made no effort to demonstrate that evidence of this alleged conduct was newly discovered and previously unavailable to the Petitioner.

<sup>2</sup> In the absence of an exception thereto, we adopt, *pro forma*, the Regional Director's recommendation that the Petitioner's Objection 6 be overruled.

<sup>3</sup> *Dresser Industries*, 231 NLRB 591, fn. 1 (1977), *enfd.* in part 580 F.2d 1053 (9th Cir. 1978), Supplemental Decision 242 NLRB 74 (1979). See *Stevenson Equipment Co.*, 174 NLRB 865, 866, fn. 1 (1969); *Evans Brothers Barber & Beauty Salons*, 256 NLRB 121 (1981).

conduct—threatening employees for their union activities—appears to be directly related to that post-petition conduct consisting of threats and intimidation which the Regional Director found merited a hearing. Thus, consistent with the cases cited in footnote 3, testimony regarding the Employer's prepetition conduct may be utilized to shed light on those events occurring in the post-petition period. Therefore, we shall order that the scope of the hearing on Objection 3 be expanded accordingly.

#### ORDER

It is hereby ordered that the above-captioned matter be, and it hereby is, remanded to the Regional Director for Region 4 for the purpose of conducting a hearing on the Petitioner's Objection 3 in accordance with the terms of this Decision

and Order and that said Regional Director be, and he hereby is, authorized to issue notice of said hearing.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting the hearing pursuant to this Order shall prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said objection. Within 10 days from the date of issuance of said report, either party may file with the Board in Washington, D.C., eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the parties filing the same shall serve a copy thereof on the other party, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendation of the Hearing Officer.